



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BSE1, LLC
FOR
Estates at Big Spring
Virginia Water Protection Program
General Permit Tracking No. WP4-20-1570**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, between the Department of Environmental Quality and BSE1, LLC regarding the Estates at Big Spring, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.* and 9 VAC 25-21-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. BSE1, LLC is a business entity authorized to do business in Virginia and references to BSE1, LLC include its affiliates, partners, and subsidiaries. BSE1, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
2. The Estates at Big Spring project comprises the construction of a residential subdivision and attendant utilities on an approximately 52-acre development site located at 15 Big Spring Lane, in Stafford County, Virginia (Property).

3. BSE1, LLC purchased ownership of the Property in December 2021.
4. 7K Investments LLC applied for, and on October 20, 2020, DEQ issued 7K Investments LLC coverage under the Virginia Water Protection Permit Program via General Permit Tracking No. WP4-20-1570, which authorized the total permanent impact to 0.48 acre of palustrine forested wetland at the site. On September 9, 2021, 7K Investments LLC submitted documentation of the purchase of 0.96 wetland credit to DEQ as compensatory mitigation for the authorized impacts. On January 5, 2023, a transfer agreement form was submitted to DEQ requesting to transfer the WP4-20-1570 permit coverage and compensatory mitigation from 7K Investments LLC to BSE1, LLC.
5. On September 15, 2022, DEQ staff performed an inspection of the Estates at Big Spring project and reviewed related project records.
 - a. The inspection was in response to a notification of unauthorized impacts to 0.15 acre of palustrine forested wetland at the site submitted to DEQ on September 12, 2022.
 - b. On September 29, 2022, DEQ issued an inspection report documenting the observations of DEQ staff during the inspection and requesting corrective actions.
6. During the September 2022 inspection, DEQ staff observed that flagging and/or marking was not present at or around nonimpacted surface waters within 50 feet of authorized activities and within the project or right-of-way limits.
7. Part I.B.10 of VWP General Permit No. WP4 states: "All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters."
8. Preconstruction photographs of each permitted impact area were not made available for DEQ staff to review during or immediately following the September 2022 inspection.
9. Part II.B.1.a of VWP General Permit No. WP4 states: "Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description."
10. During and in follow-up to DEQ's September 2022 inspection and file review, monthly self-inspection reports were not made available to DEQ for review and documentation was not otherwise provided to DEQ to demonstrate compliance with self-inspection

requirements each calendar month during which activities within permitted impact areas occurred.

11. Part II.B.1.b of VWP General Permit No. WP4 states: "Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas."
12. Based on DEQ's September 2022 inspection and file review, DEQ did not receive notification prior to the start of construction activities at the first permitted impact area.
13. Part II.E.2 of VWP General Permit No. WP4 states: "The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area."
14. Based on DEQ's September 2022 inspection and file review, DEQ did not receive the bi-annual construction status update form that was due by July 10, 2022
15. Part II.E.3 of VWP General Permit No. WP4 states: "A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location: a. Construction activities have not yet started; b. Construction activities have started; c. Construction activities have started but are currently inactive; or d. Construction activities are complete."
16. At the time of DEQ's September 2022 inspection and file review, DEQ had not received notification or the required criteria for the transfer of permit coverage from 7K Investments LLC to BSE1, LLC.
17. Part III.H of VWP General Permit No. WP4 states: "Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee. 1. The current permittee notifies the board of the proposed transfer of the general permit coverage and provides a

written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity. 2. The board does not within 15 days notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit.”

18. During the September 2022 inspection, the following observations were noted regarding unauthorized impacts to state waters:
 - a. The discharge of pollutant sediment/fill material because of undermined/overwhelmed erosion and sediment controls was confirmed to be impacting 0.15 acre of palustrine forested wetland, and in accordance with the notification received by DEQ on September 12, 2022 (see Paragraph C.5.a, above). This impact was not part of the impacts authorized by DEQ under VWP General Permit Tracking No. WP4-20-1570 and was not otherwise authorized by DEQ.
 - b. DEQ staff observed evidence of unauthorized excavation impacts to 0.17 acre of palustrine forested wetland. This impact was not part of the impacts authorized by DEQ under VWP General Permit Tracking No. WP4-20-1570 and was not otherwise authorized by DEQ.
19. Part I.B.5 of VWP General Permit No. WP4 states that, “Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.”
20. Part III.R of VWP General Permit No. WP4 states that, “Except in compliance with this VWP general permit, it shall be unlawful for the permittee to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.”
21. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters without a Permit issued by the Director. Specifically, Va. Code § 62.1-44.15:20.A states, “Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a

wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”

22. On October 26, 2022, DEQ issued Notice of Violation (NOV) No. 2209-002216 to Tradition Companies LLC, an affiliate of BSE1, LLC.
23. On November 16, 2022, BSE1, LLC submitted a written reply to the NOV, and on November 17, 2022, DEQ staff and representatives of BSE1, LLC had a conference call to discuss the NOV, BSE1, LLC’s NOV reply and enforcement proceedings.
24. Based on the unauthorized discharge notification submitted to DEQ on September 12, 2022, DEQ’s inspection of the site conducted on September 15, 2022, and corresponding file review, the NOV issued on October 26, 2022, the NOV reply submitted to DEQ on November 16, 2022, the conference call between DEQ and representatives of BSE1, LLC on November 17, 2022, and associated files and related correspondence between DEQ and representatives of BSE1, LLC and Tradition Companies LLC, DEQ concludes that BSE1, LLC has violated Parts I.B.5, I.B.10, II.B.1.a, II.B.1.b, II.E.2, II.E.3, III.H, and III.R of VWP General Permit No. WP4, Va. Code § 62.1-44.15:20.A, and 9VAC25-210-50 as described above.
25. As requested by DEQ, representatives of BSE1, LLC emailed submissions to DEQ on December 13, 2022, and January 5, 2023, which contained the items listed below that adequately demonstrate BSE1, LLC’s return to compliance:
 - a. a “Transfer of VWP General Permit Coverage Agreement Form” requesting to transfer the WP4-20-1570 permit coverage and compensatory mitigation from 7K Investments LLC to BSE1, LLC;
 - b. the bi-annual construction status update that was due by January 10, 2023, as required by VWP Permit Tracking No. WP4-20-1570;
 - c. photographic documentation of the flagging/markings installed at the site;
 - d. a copy of a monthly self-inspection report for December 2022;
 - e. a pre-construction photographic log for the site; and
 - f. a written statement that onsite construction activities began January 28, 2022.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Department orders BSE1, LLC, and BSE1, LLC agrees to pay a civil charge of **\$23,022** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

BSE1, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, BSE1, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of BSE1, LLC for good cause shown by BSE1, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2209-002216 dated October 26, 2022. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, BSE1, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. BSE1, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BSE1, LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be

construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.

6. Failure by BSE1, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BSE1, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. BSE1, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BSE1, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BSE1, LLC. Nevertheless, BSE1, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after BSE1, LLC has completed all of the requirements of the Order;
- b. BSE1, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to BSE1, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BSE1, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by BSE1, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of BSE1, LLC certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind BSE1, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of BSE1, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, BSE1, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22 day of MAY, 2023.



Regional Director
Department of Environmental Quality

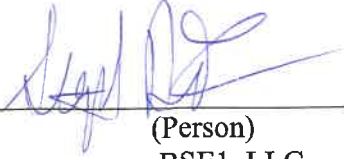
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Consent Order

BSE1, LLC; Virginia Water Protection Program General Permit Tracking No. WP4-20-1570

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BSE1, LLC voluntarily agrees to the issuance of this Order.

Date: 4/19/23 By: , Manager
(Person) (Title)
BSE1, LLC

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